

TRIAL PROCEDURES SUPPLEMENT TO LOCAL BANKRUPTCY RULES FOR THE HON. SCOTT H. YUN

I. TRIAL BRIEFS

Unless otherwise ordered by the court, trial briefs are required. Pursuant to Local Bankruptcy Rule (“LBR”) 9013-2, trial briefs must be filed not later than seven days before the trial date. The judge’s copies of the trial briefs should be delivered to Judge Yun’s chambers on the same date they are filed.

A party’s trial brief should contain: (1) a concise statement of the facts of the case; (2) all admissions and stipulations; (3) a summary of any relevant procedural history; (4) a summary of the points of law involved with supporting authorities; (5) a summary of the disputed issues of fact and of the testimony that the party plans to introduce to prove its version of the disputed facts; and (6) a brief discussion of any anticipated evidentiary issues or other problems that the party believes are likely to arise at trial.

Unless specifically requested by the court, no supplemental trial briefs will be considered.

II. PRETRIAL STIPULATION AND ORDER

Unless otherwise ordered by the court, the parties must prepare and file a written joint pretrial stipulation and order pursuant to LBR 7016-1(b) through (f) not later than fourteen days before the pretrial conference (if one is ordered) or the trial date. The judge’s copy of the pretrial stipulation and order should be delivered to chambers on the same date they are filed. The pretrial stipulation must contain the statements and information required by LBR 7016-1(b)(2).

In conjunction with the pretrial stipulation and order, the parties must meet and confer not later than twenty-eight days before the pretrial conference (if one is ordered) or thirty-five days before the trial date (if no pretrial conference is ordered) to attempt to stipulate to the authenticity and admissibility of the documents exchanged (without the necessity for live testimony). **The court expects the parties to make good faith efforts to resolve all evidentiary issues.**

III. PRESENTATION OF DIRECT TESTIMONY BY DECLARATION

The purpose of this procedure is to facilitate pretrial preparation and to streamline direct testimonies during trial so as to reduce trial time without sacrificing due process and a fair trial.

A. Except as provided herein, each party **must present the direct testimony of all of its witnesses, including expert witnesses, through the declarations of the witnesses under penalty of perjury.** Declarations will be subject to the Federal Rules of Evidence’s rules on admissibility. *See* Fed. R. Evid. 611(a); *Adair v. Sunwest Bank (In re Adair)*, 965 F.2d 777, 779–80 (9th Cir. 1992) (per curiam). Each declaration must set forth the direct testimony that the witness would give as though questions were propounded in the usual fashion. Each statement of fact or opinion must be separately, sequentially numbered.

B. All cross-examination, rebuttal, surrebuttal, and appropriate impeachment evidence must be given by live testimony. The only oral testimony that may be offered at trial by a party through its own witnesses will be **strictly limited** to rebuttal testimony or such additional testimony on matters relevant to the outcome of the proceeding as may be specifically requested by the court at the time of trial.

C. If a witness refers in the declaration to an exhibit to be admitted into evidence, the exhibit must be identified in the declaration by exhibit number or letter. The exhibit itself need not be attached to the witness's declaration but must be included in the exhibit binder and properly marked for identification. Unless the parties stipulate to the admission of an exhibit, the foundation for admission of an exhibit (other than for impeachment or rebuttal purposes) must be established in the declaration. Exhibits referenced in any declaration must be offered into evidence when the declaration is offered into evidence.

D. If a party is unable to obtain a declaration of a witness (e.g., in the case of a hostile witness), counsel for that party must file (by the applicable deadline for the filing of the witness's declaration) a declaration stating the name of the witness and a detailed summary of the expected testimony and why counsel was unable to obtain the witness's declaration. Failure to make every reasonable effort to obtain the declaration of any witness will result in the exclusion of any oral testimony of such witness by the party attempting to offer such testimony.

E. A party may also present the direct testimony of a witness in the form of a transcript of a deposition of the witness, in which event the party must submit a declaration authenticating the excerpts from the transcript that contain the testimony that the party wishes to introduce and must comply with LBR 7030-1(b). However, notwithstanding LBR 7030-1(b), the original transcript must be filed on the docket not later than the deadline for filing that witness's direct testimony by declaration.

F. The declaration of a witness for a party will be admissible at trial, subject to timely objections, only if the declarant is present at trial and subject to cross-examination.

IV. EXHIBITS

A. All exhibits must be assembled in a three-ring binder. Four binders containing all exhibits must be submitted not later than seven days before the first trial date. All exhibits must be marked for identification, be separately tabbed, and contain page numbers. Each exhibit must be marked at the bottom-right of the first page of the exhibit. Unless the parties agree upon a unified, joint set of exhibits, plaintiff's exhibits must be marked in numerical order and defendant's exhibits must be marked in alphabetical order (e.g., Plaintiff's Exhibit 1, 2, 3, etc.; Defendant's Exhibit A, B, C, etc.). If the parties agree on a unified, joint set of exhibits, the exhibits must be marked in numerical order.

B. Each exhibit binder must include as its first page an exhibit register. A sample exhibit register may be obtained from the Court Recorder or from the Clerk's Office and must be procured sufficiently in advance of the trial date to permit the completed register to be available when the exhibit binders are delivered to the court.

C. At the commencement of trial, the parties must be prepared to stipulate to admission of all undisputed exhibits. Bona fide objections may be reserved, with the issue of admissibility deferred until the exhibit is offered into evidence.

V. DEADLINES FOR SUBMISSION OF DECLARATION, EXHIBITS, AND OBJECTIONS

A. Plaintiff must file and submit to opposing counsel all declarations and exhibits comprising plaintiff's case in chief not later than twenty-eight days before the trial date.

B. Defendant must file and submit to opposing counsel all declarations and exhibits comprising defendant's case, together with any written objections to the admission of any of plaintiff's exhibits or the testimony contained in any of plaintiff's witness declarations, not later than twenty-one days before the trial date.

C. Plaintiff must file and submit to opposing counsel any written objections to the admission of any of defendant's exhibits or the testimony contained in any of defendant's witness declarations not later than fourteen days before the trial date.

D. All witness declarations and exhibits, together with any written objections to the admission of any of the exhibits or any of the declarations, or any portion thereof, must be lodged with the Courtroom Deputy not later than seven days before the trial date. Each party must lodge sufficient copies for all parties, the witness stand, the Court Recorder, and the judge.

E. At trial, each party must also have copies of any exhibits used for impeachment or rebuttal for the opposing party, witnesses, and the court.

F. Evidentiary objections will be adjudicated at the time a witness declaration or exhibit is offered into evidence. Any evidentiary objections to testimony contained in a written declaration that is not raised in a written objection filed within the applicable time limit set forth above shall be deemed waived.

G. **No other declarations will be allowed.** The only additional evidence that a party may offer at trial is true rebuttal evidence. If the court concludes that testimony that a party seeks to offer should more accurately be characterized as direct testimony than as rebuttal evidence, that testimony will be excluded or stricken if it was not set forth in a timely-filed declaration submitted by the party.

VI. EXCERPTS FROM DISCOVERY DOCUMENTS

A. **Deposition Transcripts.** A party intending to offer evidence by way of deposition testimony pursuant to Fed. R. Civ. P. 32, other than for impeachment or rebuttal, must submit a declaration authenticating the excerpts from the transcript and must comply with LBR 7030-1(b). However, notwithstanding LBR 7030-1(b), the original transcript must be filed on the docket not later than the applicable deadline for submission of declarations, exhibits, and objections set forth in Section V.

B. Other Discovery Documents. Excerpts from interrogatories, requests for admissions, or other discovery documents to be offered at trial, other than those used for impeachment or rebuttal, must be filed pursuant to LBR 7026-2(c) not later than the applicable deadline for submission of declarations, exhibits and objections set forth in Section V.

VII. CONTINUANCE OF TRIAL DATE

Trials will be commenced promptly at the scheduled date and time. Trial dates will **not** be continued or vacated absent good cause, on noticed motion, supported by competent evidence. The parties will be contacted and informed whether the continuance has been granted or denied.

VIII. SETTLEMENT

Not later than five days before the trial date, counsel for plaintiff must telephone the Courtroom Deputy at (951) 774–1075 to report (1) whether the parties intend to go forward with trial as scheduled; (2) if settlement is imminent; (3) whether the time reserved for trial is realistic; and (4) any other relevant information.

Stipulations for settlement must be in writing, executed by each party or their counsel, and delivered to chambers before the date of trial. If time constraints prevent reducing a settlement to writing prior to trial, all of the parties or their counsel must (1) advise chambers of the settlement and (2) appear at the time set for trial to recite the stipulation on the record.

IX. COMPLIANCE

Failure to comply with these procedures may result in the imposition of sanctions, including, but not limited to, monetary sanctions, removal from the trial calendar, dismissal for failure to prosecute, or the exclusion of evidence (e.g., witnesses who were not timely identified or exhibits that were not timely submitted).